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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 68

PUGET SOUND STEVEDORING COMPANY,
APPELLANT,

vs.

THE TAX COMMISSION OF THE STATE OF
WASHINGTON ET AL., ETC.

APPEAL FROM THE SUPREME COURT OF THE STATE OF
WASHINGTON

FILED MAY 18, 1937.

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[fol. 1]

IN SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY

26324

No. 16407

PUGET SOUND STEVEDORING COMPANY, a Corporation,
Plaintiff,

v.

THE TAX COMMISSION OF THE STATE OF WASHINGTON and Harold H. Henneford, Thomas S. Hedges and T. M. Jenner, Members of Said Commission, Defendants

COMPLAINT—Filed January 13, 1936

Comes now plaintiff and for cause of action against the defendants, complains and alleges as follows:

I

Plaintiff, Puget Sound Stevedoring Company, is a corporation organized and existing under and by virtue of the laws of the State of Washington and has paid its annual license fee last due the State of Washington.

II

Defendants, Harold H. Henneford, Thomas S. Hedges and T. M. Jenner, constitute the Tax Commission of the State of Washington, whose principal office is in Olympia, Thurston County, Washington.

III

Plaintiff is engaged solely in the business of stevedoring or loading, discharging and handling of cargoes of vessels engaged exclusively in interstate or foreign commerce, or both. Said cargoes while so handled are at all times in continuous movement from the hold of a vessel to first place of rest, or vice versa. A more particular description of the nature and character of the plaintiff's business activities and of the stevedoring industry is attached hereto, marked Exhibits A and B, and made a part hereof.

IV

The defendants, acting as a board, with power to admin-[fol. 2] ister the tax laws of the State of Washington, have asserted and are asserting the right to impose upon plaintiff a tax or exercise for the privilege of engaging in its business activities, said tax or excise being commonly known as the Business and Occupation Tax, created by Chapter 191, Laws of Washington 1933, as amended by Chapter 57, Laws of Washington Extraordinary Session 1933, and Chapter 180, Laws of Washington 1935.

V

The business activities of the plaintiff are within the exclusive jurisdiction and control of the United States of America. The above tax or excise if enforced against plaintiff is in direct violation of Article I, Section 8 of the Constitution of the United States of America in that said tax or excise imposes a burden, hindrance and obstruction upon interstate and foreign commerce and upon the free and steady flow and movement of the same.

VI

The imposition of the said tax or excise upon the plaintiff for the privilege of engaging in its business activities in the State of Washington likewise constitutes a denial to plaintiff of the equal protection of the laws in violation of the Fourteenth Amendment, to the Constitution of the United States, and Article I, Section 12, of the Constitution of the State of Washington, in that said tax or excise is threatened to be imposed upon the business activities of the plaintiff as a contracting stevedore, but same is not imposed upon a ship owner when doing its own stevedoring in lieu of employing the services of an independent contractor such as plaintiff.

VII

The imposition of the said tax or excise upon the plaintiff for the privilege of engaging in its business activities in the State of Washington is likewise a deprivation of plaintiff's property without due process of law, in violation of the [fol. 3] Fourteenth Amendment to the Constitution of the United States and Article I, Section 3 of the Constitution

of the State of Washington, in that said tax or excise is arbitrary, unreasonable, excessive and confiscatory.

VIII

Plaintiff alleges that unless restrained and enjoined by this court the defendants, acting for and on behalf of the State of Washington in their capacity as the Tax Commission of the said State, will continue to assert against plaintiff the said tax or excise and will attempt to levy and collect the same, which action will result in a multiplicity of suits and an impairment of the credit of the plaintiff; that the provisions of the said laws in so far as they are applied to and affect plaintiff are wholly negative and void for the reasons hereinabove set forth; that threatened action of the defendants seeking to enforce the provisions of the said laws against the plaintiff is creating and will create a condition of uncertainty and jeopardy in the conduct of the business of the plaintiff, which substantially and materially affects same; that the said laws recognize and provide for an injunction or restraining order to issue to restrain and enjoin the collection of any tax or penalty imposed thereunder upon the ground that the assessment, levy and collection thereof is in violation of the Constitution of the United States, or that of the State of Washington; that the defendants, constituting the Tax Commission of the State of Washington, are desirous of settling the dispute concerning the applicability of the said tax or excise to the business activities of the plaintiff, and to the business activities of many other stevedoring concerns in the State of Washington engaged in like activities, and that an early decision of the matters here presented is in the best interests of all concerned.

IX

By reason of the facts herein alleged plaintiff has no plain, speedy, or adequate remedy at law.

[fol. 4] WHEREFORE plaintiff prays judgment and decree of this court, as follows:

1. That defendants and each of them, individually and as the Tax Commission of the State of Washington, and any associate commissioner, and their agents, servants and employees, be forever enjoined and restrained from enforc-